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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Placer)

THE PEOPLE,

Plaintiff and Respondent,

v.

LEO THOMAS BAHLING, JR.,

Defendant and Appellant.

C084676

(Super. Ct. No. 62141847)

In October 2015, defendant Leo Thomas Bahling, Jr., was a passenger in a car stopped by police. Police found methamphetamine and marijuana in defendant's backpack. In August 2016, the trial court denied defendant's motion to suppress pursuant to Penal Code section 1538.5. Defendant subsequently pleaded no contest to multiple drug charges. On appeal, defendant contends the trial court erred in denying his motion to suppress. In supplemental briefing, defendant requests we strike a three-year enhancement for a prior narcotics-related conviction, arguing it is no longer valid under the 2017 amendment to Health and Safety Code section 11370.2, subdivision (a). We

agree and will strike the prior narcotics-related conviction enhancement and otherwise affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

At 6:30 p.m. on October 31, 2015, Deputy Batine Ramirez was patrolling in a fully marked patrol vehicle. Ramirez saw a female driving a BMW turn left onto a two-lane street. The BMW “land[ed]” in the primary (left) lane and then moved into the secondary (right) lane without signaling. The BMW continued, moving into the primary lane when it merged with the secondary lane. Ramirez, who was within 100 feet of the BMW, believed this violated Vehicle Code section 22107¹ and initiated a traffic stop. The driver of the BMW pulled over immediately after making a right turn at a stop sign. Ramirez’s patrol car had a dash camera that recorded the incident; a copy of the recording was played for the trial court during the motion to suppress hearing. Ramirez testified the dash camera “turns on automatically with the Code 3 lights.” Defendant, who was a passenger in the BMW, ran away while Ramirez was searching the vehicle. Pursuant to the stop, officers searched defendant’s backpack and found 13 grams of methamphetamine, 180 grams of marijuana, empty baggies, and a scale. Defendant also told officers that he sold drugs and was in the area to replenish his supply.

In July 2016, defendant filed a motion to suppress pursuant to Penal Code section 1538.5. Defendant argued the stop was improper because, while the driver of the BMW was turning left, she was permitted under section 22100 to enter the secondary lane without signaling. The trial court disagreed and denied defendant’s motion in August 2016, reasoning the driver of the BMW was required to signal pursuant to sections 22107 and 22108. The trial court found the BMW had “completely” entered the primary lane after turning left and remained in that lane “for a short period” before moving into the

¹ Undesignated statutory references are to the Vehicle Code.

secondary lane without signaling. At the time, Deputy Ramirez's car was following within 100 feet. Under the circumstances, the officer had a reasonable suspicion the driver had violated the Vehicle Code and the stop was permissible.

In August 2016, defendant pleaded no contest to possession of methamphetamine for sale (Health & Saf. Code, § 11378; count one), transportation of methamphetamine for sale (Health & Saf. Code, § 11379, subd. (a); count two), possession of marijuana for sale (Health & Saf. Code, § 11379; count three), transportation and possession for sale of marijuana (Health & Saf. Code, § 11360, subd. (a); count four), and misdemeanor resisting a peace officer (Pen. Code, § 148, subd. (a)(1); count five). Defendant also admitted having three prior narcotic-related convictions: (1) two convictions under Health and Safety Code section 11379 (the first in 1993 and the second in 1998), and (2) a 1998 conviction under Health and Safety Code section 11378. (Former Health & Saf. Code, § 11370.2, subd. (a).) In May 2017, the trial court granted defendant's motion to dismiss two of defendant's prior narcotics-related convictions (the 1993 conviction and one of the 1998 convictions), but denied the motion to dismiss as to the 1998 conviction under Health and Safety Code section 11378. The trial court sentenced defendant to state prison for an aggregate term of seven years, including three years consecutive for the narcotics prior. The trial court ordered that three years of defendant's sentence be served on mandatory supervision.

DISCUSSION

I

“In reviewing a trial court's ruling on a motion to suppress evidence, we defer to that court's factual findings, express or implied, if they are supported by substantial evidence. [Citation.] We exercise our independent judgment in determining whether, on the facts presented, the search or seizure was reasonable under the Fourth Amendment.” (*People v. Lenart* (2004) 32 Cal.4th 1107, 1119.) “A detention is reasonable under the Fourth Amendment when the detaining officer can point to specific articulable facts that,

considered in light of the totality of the circumstances, provide some objective manifestation that the person detained may be involved in criminal activity.” (*People v. Souza* (1994) 9 Cal.4th 224, 231.)

At issue is whether Deputy Ramirez had a reasonable basis to initiate the traffic stop and detain defendant. According to defendant, the People failed to meet their burden of proof because Ramirez initiated the traffic stop before any perceived traffic violation. Defendant points to Ramirez’s testimony that the dash camera “turns on automatically” with the lights and notes that the video played for the court starts before the BMW made the left turn and then changed lanes without signaling. As such, argues defendant, Ramirez had already activated her lights before the driver of the BMW committed any traffic violation.

Our review of the video shown to the trial court indicates otherwise. Lights do not begin to flash from Deputy Ramirez’s patrol car until *after* the BMW turned left, settled briefly but completely in the primary lane, moved without signaling into the secondary lane, pulled into the primary lane when it merged with the secondary lane, and then slowed as it approached a stop sign to turn right. The BMW turned right at the intersection and immediately pulled over, indicating it was responding to the now flashing lights. We note Ramirez testified that the flashing lights at the end of the video shown to the trial court were from her patrol vehicle.

Defendant further argues sections 22107 and 22108 are inapplicable because the BMW was lawfully turning at a controlled intersection, pursuant to section 22100. We disagree.

Section 22107 states: “No person shall turn a vehicle from a direct course or move right or left upon a roadway until such movement can be made with reasonable safety and then only after the giving of an appropriate signal in the manner provided in this chapter in the event any other vehicle may be affected by the movement.” Section 22108 requires a driver to signal continuously for at least 100 feet before turning. Under

section 22100, subdivision (b) a driver turning left may “leave the intersection in a lane lawfully available to traffic moving in that direction upon the roadway being entered.”

As the trial court found, after turning left, the BMW “was in the [primary lane] from the end of the intersection for a distance past the second white dividing line before it moved over without signaling.” Because the BMW driver had completed the turn by exiting the intersection and settling into the primary lane, section 22100 was no longer applicable when she moved over to the secondary lane. Given that Deputy Ramirez was driving within 100 feet of the BMW and was affected by the lane change, the driver of the BMW was required under section 22107 to signal when moving into the secondary lane. Under the circumstances, we conclude the traffic stop and detention of defendant was permissible. (See *People v. Logsdon* (2008) 164 Cal.App.4th 741, 744-746 [the defendant driver was properly stopped and detained for a potential violation of § 22107 where he changed lanes without signaling and a police patrol car was within 100 feet of his vehicle].)

II

In 2017, the Legislature amended Health and Safety Code section 11370.2, subdivision (c) by eliminating enhancements for prior convictions for violations of Health and Safety Code section 11378. (Stats. 2017, ch. 677, § 1, eff. Jan. 1, 2018.) In other words, defendant’s prior felony conviction for violating Health and Safety Code section 11378 would no longer support the imposition of the three-year enhancement under Health and Safety Code section 11370.2, subdivision (a).

As both parties acknowledge, the amendment to Health and Safety Code section 11370.2 is retroactive and applies to cases like defendant’s which are still on appeal and not yet final. (*People v. Millan* (2018) 20 Cal.App.5th 450, 455-456; see also *In re Estrada* (1965) 63 Cal.2d 740, 744.) The appropriate remedy is to strike the enhancement and remand for resentencing. (*Millan*, at p. 456.)

DISPOSITION

The judgment is affirmed. The Health and Safety Code section 11370.2 enhancement is struck, and the sentence imposed thereon is vacated. The matter is remanded to the trial court to resentence defendant and prepare an amended abstract of judgment and to forward a certified copy to the Department of Corrections and Rehabilitation.

 /s/
BLEASE, Acting P. J.

We concur:

 /s/
MAURO, J.

 /s/
RENNER, J.